

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING #97-53**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Sales and use taxability of orthodontic appliances and devices.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

A dentist operates an orthodontic practice located in Tennessee. The dentist purchases corrective orthodontic appliances and devices (hereinafter "appliances") which he/she attaches to the teeth of his/her patients.

ISSUE

Is the dentist required to pay sales or use tax on his/her purchases of orthodontic appliances or devices which are to be attached to the teeth of the dentist's patient?

RULING

No.

ANALYSIS

T.C.A. § 67-6-335 states:

A dentist shall be considered the user and consumer of the tangible personal property used in the practice of the dentist's profession, and the tax imposed by this chapter shall not be applicable to all or any part of the charges made by a dentist to the dentist's patients in connection with the sale or transfer of such tangible personal property.

While under this provision the dentist is not liable to collect the sales tax on the transfer of tangible personal property to his/her patient, as the user and consumer, he/she is liable for payment of sales or use tax on the purchase of tangible personal property used in his/her practice. *See* T.C.A. § 67-6-203. However, the provisions of T.C.A. § 67-6-335 must be considered together with any other exemption which would exempt the tangible personal property being consumed.

T.C.A. § 67-6-314 states, in pertinent part:

There is exempt from the sales tax imposed by this chapter:

... (5) The sale or repair of prosthetics, *orthotics*, special molded orthopedic shoes, walkers, crutches, surgical supports of all kinds, and *other similarly medical corrective or support appliances and devices*. (Emphasis supplied.)

As explained in the following, the appliances which are the subject of this ruling are covered by this exemption. “Orthodontia” is defined as “the dental specialty and practice of correcting abnormally aligned or positioned teeth.” AMERICAN HERITAGE DICTIONARY (2d College Ed. 1985). The purpose of the appliances is obviously to align or reposition the patient’s teeth. The Department has applied the exemption for orthotics¹ to devices used to brace, support, or align the skeletal or muscular system. The teeth are a part of the skeletal system² and an appliance used to align or reposition the teeth is exempt as an orthotic. Even if it were argued that such appliances are not orthotics, their function is so close to the other items of property specifically listed in the statute so as to constitute “similarly medical corrective or support appliances and devices.”

Under the preceding analysis, sales or use tax is not due on the dentist’s purchases of the appliances in question.

Owen Wheeler
Tax Counsel 3

APPROVED: Ruth E. Johnson

¹ “Orthotics” is defined as “a branch of medicine that deals with the use of specialized mechanical devices to support or supplement weakened joints or limbs.” AMERICAN HERITAGE DICTIONARY (2d College Ed. 1985). In the context of T.C.A. § 67-6-314(5), the term no doubt is intended to refer to orthotic devices.

² “Tooth” is defined as “...one of a set of hard, bonelike structures rooted in sockets in the jaws...” AMERICAN HERITAGE DICTIONARY (2d College Ed. 1985). Since teeth are bonelike and rooted in the jaws, it is logical, for the purpose of the sales tax exemption, to consider them a part of the skeletal system.

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